Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

CHARLES K. MONIN, JR.

Petitioner,

v.

ROGER LEGGET, RECEIVER FOR MONIN INC. ET. AL.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY
NO. 2002-SC-716-D

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether or not the Commonwealth of Kentucky misapplied state dissolution statutes to deny Petitioner his contract rights in violation of Art. I, Sec. 10, U.S.C.A. and Sec. 19, Bill of Rights, Ky. Const.

(2) Whether or not the Commonwealth of Kentucky denied Petitioner due process in depriving him of his contract rights. Sec. 1, 14 Amend., U.S.C.A.

PARTIES

Petitioner: Charles K. Monin, Jr.

Respondents: Paul B. Monin, Joseph E. Monin, James A. Monin, Martha Wheeler, Raphael Monin, William Monin, Linda Roby, Carolyn Backherms, and Roger Leggett Receiver for Monin Inc.

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OPINIONS/ORDERS BELOW

(1) Supreme Court of Kentucky Order Denying Discretionary Review entered 12/11/03;
(2) Court of Appeals of Kentucky Order Denying Motion to Reconsider, 8/5/02;
(3) Court of Appeals of Kentucky Opinion & Order Affirming Nelson Circuit Court, 6/14/02; and
(4) Findings of Fact, Conclusions of Law and Judgment of Nelson Circuit Court, 4/6/00.

JURISDICTION

(1) This petition is timely filed on or before 3/10/04 per Rules 13 and 29 based on the Supreme Court of Kentucky Order Denying Discretionary Review entered 12/11/03.
(2) Title 28 U.S.C. 1257 confers upon this court jurisdiction to review by writ of certiorari final state court judgments where any right is claimed under the Constitution of the United States.

CONSTITUTIONAL PROVISIONS

Art. I, Sec. 10, U.S.C.A.:
"No State shall . . . pass any . . . .
Law impairing the Obligation of Contracts . . . . "

Sec. 19, Bill of Rights, Ky. Const.:
" . . . , nor any law impairing the obligation of contracts, shall be enacted."

Sec. 1, 14th Amend., U.S.C.A.:
" . . . nor shall any State deprive any person of . . . property, without due process of law . . . "

STATEMENT OF CASE

BACKGROUND

On the third day of February, 1991, the Monin family and Monin Inc., a closely held family corporation, executed a settlement agreement to resolve prior litigation and pending issues between the surviving ten Monin siblings after the demise of their parents.

Under this contract, inter alia, the parties intended to have a full and final accounting of the estates of their parents, from which each of the siblings inherited 5% stock in Monin Inc. Charles K. Monin, Jr. already owned 50% of the corporation. The contract was also drafted to settle the rights, interests and obligations of the parties with regard to Monin Inc. To accomplish this goal, the contract mandated the continuing existence of Monin Inc. in the sole ownership of Charles K. Monin, Jr. and Donald Monin. The land, which is a commercially valuable farm near Bardstown, Kentucky was to be divided between the two groups of siblings, who were required to hold and use the land under I.R.S. regulations for a period of time to eliminate, or minimize, a potential, substantial tax liability on any transfer, sale or exchange of the stock and/or land.

When there arose a question of whether or not federal estate tax liability had been misrepresented by the Monin Respondents, and the issue was not resolved, Charles K. Monin, Jr. and Donald Monin sued their siblings for fraud in the inducement to set aside the agreement, and for maladministration of their parents' estates.

In the interim the Petitioner and Don Monin refused to carry out any terms of the contract so as not to ratify the same and nullify their claim for relief under contract law. Respondents then resorted to numerous motions to compel performance.

Prior to trial on the fraud claim, the Nelson County Circuit Court ordered compliance and held Charles K. Monin, Jr. in contempt for which he served thirty days in 1996.

In early 1997, a jury trial resulted in a verdict in favor of the Monin Respondents thereby upholding the validity of the contract. The Petitioner and Don Monin accepted the verdict and made numerous requests to the Monin Respondents to consummate the Settlement Agreement. At this time the parties disagreed that execution was predicated on a pre-condition that the estates of the parents be settled.

Meanwhile, the Monin Respondents further refused to carry out the contract when in 1996 Isaac Commercial Properties of Lexington, Kentucky, on behalf of the Walmart Real Estate Business Trust, offered to buy 35 acres of the 150 acre farm to build a new superstore. However, the land required included parcels from both groups, and the Petitioner and Don Monin elected to keep their land under the contract. Not only had Charles K. Monin, Jr., his family and parents resided on the farm since the 1950s, family businesses were operated from 3 acres of the farm. Furthermore, they objected that any sale would violate the settlement agreement under the aforesaid I.R.S. regulations, triggering substantial tax liabilities.

In order to circumvent the contract, the Monin Respondents filed a petition to judicially dissolve Monin Inc. under Kentucky statue. (K.R.S. 271B.14-300 et. seq.)

MATERIAL FACTS re: QUESTIONS PRESENTED FOR REVIEW:

To protect their contract rights, Charles K. Monin, Jr. and Don Monin, filed Amended Petitions for a Declaration of Rights under Kentucky statute, which mandates a hearing if the application of a statute conflicts with a contract. (K.R.S. 418.040; 418.045).

After a bench trial on the issues of dissolution and declaration of rights in 1997, the trial court ignored the declaration evidence without ruling and judicially dissolved Monin Inc. placing the assets of the corporation in the hands of Roger Leggett as Receiver.

In January, 1999, the Court of Appeals of Kentucky upheld the dissolution. The same court rejected the argument that the Settlement Agreement per se prohibited dissolution by waiver. The court found this argument unacceptable given its finding that Charles K. Monin, Jr. obstructed the contract prior to the fraud trail. Discretionary Review was denied by the Supreme Court of Kentucky on the 12th day of January, 2000.

By Judgement entered the 6th day of April, 2000 the Nelson Circuit Court denied a motion by Petitioner for declaratory relief and formally dismissed the Amended Peititions for a Declaration of Rights by declaring the settlement agreement null and void citing the law of the case doctrine per the Court of Appeals Opinion upholding dissolution and rejecting the waiver argument. The appellate court did not address the issue of the validity of the contract because that issue had not been decided by the trial court in a final judgement subject to appeal. (Ky. C.R. 54)

On June 14, 2002, the Court of Appeals of Kentucky rendered its Opinion & Order affirming the nullification of the contract. The Court of Appeals opined that any legal issues raised were fully considered by the prior panel and would not be reconsidered. Furthermore, the Court stated that said issues were "not preserved by being raised in the court below when appellants filed a petition for declaratory rights." (pp. 3-4)

However, counsel for Petitioner raised the issue in its brief to the Court of Appeals of December 28, 2000. Appellants argued what is being raised here. Appellants argued that the same constitutional provisions cited herein prohibiting state impairment of contracts under the circumstances mandated that the Settlement Agreement survive the dissolution of the family corporation. (p.10) The Appellants relied on the Kentucky appellate

decisions in Drane v. Weston, 125 S.W. 2d 722 (1939) and Kentucky Utilities Co. v. Carlisle Ice Co., 836 S.W. 2d 388 (1991), which specifically prohibit courts in Kentucky from interpreting statutes in violation of Sec. 19 of the Kentucky Bill of Rights (p. 11-12) And, the appellants cited contract law in Kentucky which holds that the terms of any contract include state and federal law in effect at the time of execution, and that there was no factual or legal basis to support voiding the contract. (pp. 13-16) Appellants also cited Sec. 1, 14th Amend., U.S.C.A. to argue they had been denied due process by the Kentucky courts. (p. 12) Finally, appellants relied on Ky. C.R. 61.02 which permitted review on appeal of "A palpable error which affects the substantial rights of a party. . . . even though insufficiently raised or preserved for review, ... " (p. 8)

On August 5, 2002, the Court of Appeals of Kentucky summarily rejected a motion to reconsider.

The Court did not accept the argument of Petitioner in his motion that the issues were preserved per the record. Firstly, the Petitioner argued he was entitled to declaratory relief due to the content of the Amended Petitions for a Declaration of Rights pursuant to K.R.S. 418.040 and 418.045, which provide respectively for the right to relief in general and specifically in cases where rights under contract are affected by statute. Under the Kentucky Supreme Court decision in City of Florence v. Owen Electric Coop, Inc., 832 S.W. 2d 876 (1992), state and federal law in effect is part of every contract upon execution, and thus subject to review on a petition for declaratory relief. (p. 3) And, the Amended Petition itself specifically requested "declaration of the rights, obligations and interests of the parties hereto under the Settlement Agreement of February 3, 1991, including but not limited to the dissolution of Monin, Inc. . . . ," as the trial court understood in its Order of April 6, 2000: " . . . inter alia to have the respective rights of all parties to the February 3, 1991 settlement agreement defined." (pg. 1)

Secondly, as noted by the court, a prior appeal showed preservation of the issue so that the law of the case doctrine should apply to the instant appeal. (p. 1)

Lastly, the Petitioner also reminded the Court of Appeals that at the hearing on its motion for declaratory relief, counsel, after stating there was law to support the petition, was interrupted by the judge and the hearing terminated before the legal argument could be addressed with the court or put on the record. (pp. 2-3)

Petitioner's Motion for Discretionary Review to the Supreme Court of Kentucky, outlined this question of law for purposes here: "The present appeal raised . . . fundamental issues of state and constitutional law: (1) whether or not dissolution of a corporation by judicial decree pursuant to state statute voids any contract which dictates the rights and obligations of persons affected by the dissolution and/or denies a person's right to be heard on a Petition for a Declaration of Rights; . . . "

Three arguments were raised at the Court of Appeals on the contract question: (1) under basic contract law the settlement agreement survives the dissolution of the corporation (p. 8) ; (2) voiding of the contract violated "state and federal constitutional prohibitions against legislative impairment of contracts, which apply to statutory dissolution. Sec. 19, Bill of Rights, Constitution of Commonwealth of Kentucky; Art. I, Sec. 10, United States Constitution." (pg 8) ; and (3) appellants have a fundamental statutory right to be heard on their Petition for a Declaration of Rights, and a denial of the same is a denial of due process. (pg 9)

On December 11, 2003, the Supreme Court of Kentucky denied discretionary review, effectively exhausting Petitioner's state remedies.

REASONS FOR REVIEW

Petitioner asserts that the following reasons compel granting his request for a writ of certiorari:

1. The right to private contract without interference from the government is a fundamental right recognized throughout our history of jurisprudence.
2. The issue of whether or not a contract in the form of a settlement agreement setting out the rights, interests and obligations of the owners in a corporation should survive the dissolution of that corporation should be settled by this Court.
3. Petitioner has been deprived of his contract rights, by the Commonwealth of Kentucky through its courts, in violation of state and federal constitutional provisions prohibiting impairment of contracts.
4. The state courts denied Petitioner due process and misapplied state statutes when they (a) voided the settlement agreement based on judicial dissolution of a corporation under state statute; (b) denied him a hearing on his Petition for a Declaration of Rights mandated by Kentucky statute, which by law in Kentucky, includes contract and constitutional law; (c) prevented him from arguing and/or putting on the trial court record at the hearing of April 5, 2000 his contract and constitutional law objections to voiding the contract; and (d) denied his appeals on the grounds that his claims were not preserved on the record; and (e) failed to grant relief under the circumstances per Ky. Civil Rule 61.02, permitting appellant courts in Kentucky to consider on appeal an error which affects the substantial rights of a party even though insufficiently raised or preserved for review.

Whether Petitioner's rights under the United States Constitution were given due recognition by the courts of Kentucky is a question as to which the Petitioner is entitled to invoke the judgment of this Court. This Court has the authority to determine, not only whether the right was denied, but whether it was denied in substance and effect on nonfederal grounds. Staub v. City of Baxley, Georgia, 78 S. Ct. 277, (1958)

Furthermore, the grounds for denial of due process by state courts may be examined from the overall record by this Court to review state actions, Chambers v. Mississippi,

93 S. Ct. 1038, (1973)

Finally, this Court has held that it may review federal claims even if not presented to the state court on a case by case basis. Adams v. Robertson, 177 S. Ct. 1028 (1997)

WHEREFORE, the Petitioner, Charles K. Monin, Jr., by and through the undersigned counsel requests that this Honorable Court grant his petition for a Writ of Certioari.

Respectfully submitted,

Marshall V. Gaither
Councel for Petitioner
P.O.B. 430
Pewee Valley, Kentucky 40056
(502) 241-4756

SUPREME COURT OF KENTUCKY

2002-SC-0716-D
2000-CA-0056

CHARLES K. MONIN, JR.
and DONALD MONIN MOVANTS

V. NELSON CIRCUIT COURT
NO. 1994-CI-0056

MONIN, INC., ET AL RESPONDENTS

ORDER DENYING
DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.
All concur.
ENTERED December 11, 2003.

s/ Charles Lambert
Chief Justice

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS
No. 2000-CA-001067-MR

CHARLES K. MONIN,
ET AL. APPELLANTS

v. APPEAL FROM NELSON
CIRCUIT COURT
ACTION NO. 94-CI-00056

PAUL B. MONIN,
ET AL. APPELLEES

** ** ** ** **

ORDER

BEFORE: BUCKINGHAM, KNOPF, and McANULTY, Judges.

This Court has considered appellant's motion to reconsider the opinion and order entered June 14, 2002, and appellant's motion to file a reply to appelle's response to appellant's motion to reconsider. Appelle has filed a response in opposition to appellant's motion to reconsider. No response to appellant's motion to file a reply was filed.

Having considered the motions, the Court ORDERS the motions be, and they are hereby, DENIED.

s/William McAnulty
JUDGE, COURT OF APPEALS
ENTERED: AUGUST 5, 2002

RENDERED: JUNE 14, 2002;
2:00 p.m.
NOT TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

NO. 2000-CA-001067-MR

CHARLES K. MONIN JR.
ET AL. APPELLANTS

vs. APPEAL FROM NELSON
CIRCUIT COURT
HONORABLE LARRY RAIKES,
JUDGE
ACTION NO. 94-CI-00056

PAUL B. MONIN,
ET AL. APPELLES

OPINION AND ORDER
(1) AFFIRMING
(2) GRANTING MOTION TO
DISMISS ONE APPELLANT
(3) DENYING MOTION TO
DISMISS APPEAL
(4) DENYING MOTION TO
DISMISS APPELLEE.
** ** ** ** **

BEFORE: BUCKINGHAM, KNOPF,
AND McANULTY, JUDGES.

McANULTY, JUDGE: In this appeal, appellants, Charles K. Monin, Jr. and Donald Monin, challenge the April 6, 2000 judgment of the Nelson Circuit Court which declaired void the Settlement Agreement they entered into with the appellees, Paul B. Monin, Joseph E. Monin, Raphael Monin, William Monin, James A. Monin, Linda Roby, Martha Wheeler, and Carolyn Backherms. Appellants also appeal the April 13, 2000 order of the Nelson Circuit Court which denied appellant's motion to alter or amend the judgment entered on the supersedeas bond. We affirm.

As as initial matter, some of the appelles filed a motion to dismiss Monin, Inc., as an appellant. Monin, Inc. is currently in dissolution proceedings by order of the Nelson Circuit Court as a result of prior litigation between these parties. A receive, Roger Leggett, has been appointed for Monin, Inc. Appellants are two stockholders who have contested the dissolution of the corporation. The court below held that since the corporation has been dissolved, appellants have no standing to prosecute any matter in the name of Monin, Inc. We conclude that appellants were not authorized to bring the instant appeal in the name of the corporation. Therefore, we dismiss Monin, Inc. as an appellant in this case.

Both appellants and appellees contend, however, that the corporation is a necessary party to the appeal as a party to the Settlement Agreement. In the court below, the corporation was designed a third-party defendant in the proceedings leading to this appeal. We agree that the corporation is a necessary party to this appeal. However, we do not agree with appellees that dismissal of the appeal is required because Monin, Inc. was not named as an appellee. We conclude that Monin, Inc. may be designated as a appellee since appellants gave sufficient notice that it was a party to the appeal. Blackburn v. Blackburn, Ky., 810 S. W. 2d 55 (1991)

Wherefore, we grant the motion to dismiss Monin, Inc. as an appellee because this Court has found the corporation to be an indispensable party to the appeal.

Next, appellees, Isaac Commerical Properties and Wal-Mart Real Estate Business Trust, named as Purchaser/ Assignee in this case, moved this Court to dismiss them from this appeal. On February 8, 2001, Wal-Mart Real Estate Business Trust, assignee of Isaac Commercial Properties, terminated its contract with Roger Leggett, Receiver for Monin, Inc. They assert that they no longer have an interest in the subject matter of this litigation. Appellants assert that termination of the contract does not terminate these appellees' interest in the property at issue, and that at any time after dismissal these appellees could enter into another contract to purchase the property. We deny the motion to dismiss Isaac Commercial Properties and Wal-Mart Real Estate Business Trust from this appeal.

As for the merits of the present appeal, appellants argue that the circuit court action dissolving the corporation violated the federal and state constitutional prohibitions against legislation impairing contracts, and denied them due process of law because the Settlement Agreement could no longer be carried out. Appellees assert that appellants raised these claims in the appeal of the court's order of August 15, 1997, which ordered the dissolution of Monin, Inc. From the limited record before us, this appears correct. Further, we conclude that this argument was not preserved by being raised in the court below when appellants filed a petition for declaratory rights. The trial court correctly denied the petition for declaration of rights under the Settlement Agreement due to the fact that the agreement is now null and void.

* * * * * * * * * * * * * * *

For the forgoing reasons, we affirm the orders of the Nelson Circuit Court.

IT IS HEREBY ORDERED (1) that appellees' Motion to Dismiss Monin, Inc. as a appellees' be and the same is hereby GRANTED; (2) appellees' motion to dismiss the appeal is hereby DENIED and Monin, Inc. shall be designated as an appellee; and (3) the motion of appellees, Isaac Commercial Properties and Wal-Mart Real Estate

Business Trust, to be dismissed from this appeal is hereby DENIED.

ENTERED: June 14, 2002

s/William McAnulty
Judge

ALL CONCUR.

BRIEF FOR APPELLANTS:

Marshall V. Gaither
Pewee Valley, Kentucky

BRIEF FOR APPELLEE:

John S. Kelley, Jr.
Kelley & Hite, PLLC
Bardstown, Kentucky

NELSON CIRCUIT COURT

NO. 94-CI-00056

CHARLES KELM
MONIN, JR., ET AT PLAINTIFFS

VS.

PAUL MONIN, ET AL DEFENDANTS
THIRD PARTY PLAINTIFFS

VS.

MONIN, INC.
THIRD PARTY DEFENDANTS

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
JUDGMENT

****

On November 22, 1996, plaintiff, Charles Kelm Monin, Jr. ("Charles"), and third-party defendant, Monin, Inc., filed a petition for declaration of rights, subsequently amended on October 24, 1997, wherein they sought, inter alia, to have the respective rights of all parties to the February 3, 1991 settlement agreement defined.

Rulings on those declarations of rights issues were abated pending finalization of other issues pending at that time. Subsequently, on January 31, 2000, an opinion of the Kentucky Court of Appeals became final under which dissolution of Monon, Inc. and the appointment of a Receiver were upheld. Reference is made to that opinion, No. 1997-CA-002871-MR, since it constitutes the law of the case, effectively rendering moot the declaration of rights issues.

Charles has now moved to set his declaration of rights claim for hearing and to stay all proceedings by the Receiver pending a ruling thereon.

First, since Monin, Inc. has not been dissolved, Charles has no standing to prosecute any matter in the name of Monin, Inc. Second, since Charles' request for declaration of rights is predicated upon the February 3, 1991 settlement agreement, the Court must determine if that agreement now has any validity.

A perusal of the February 3, 1991 agreement will quickly reflect that the Monin, Inc. stock was the core around which the agreement was woven. When Monin, Inc. no longer existed, the primary source of consideration for the February 3, 1991 agreement ceased to exist rendering the agreement null and void.

For these reasons, Charles' petition and amended petitions for declaration or rights shall be dismissed.

NOW, THEREFORE, THE PREMISES CONSIDERED, IT IS ORDERED AND ADJUDGE AS FOLLOWS:

1. The agreement of February 3, 1991, be and it is hereby declared null and void of no further force and effect.

2. That the petition and amended petition of plaintiff, Charles Kelm Monin, Jr. for declaration of rights, filed herein on November 22, 1996 and October 24, 1997, be and they are hereby dismissed, with prejudice.

3. That the aforementioned petitions as they relate to third-party defendant, Monin, Inc., be and they are hereby dismissed, due to lack of standing by Charles Kelm Monin, Jr., to prosecute them.

4. That the motion of plaintiff, Charles K. Monin, Jr., to stay further proceedings by the Receiver pending a hearing upon his declaration of rights petitions be and it is hereby denied as moot.

This is a final and appealable judgement and there is no just reason for delay.

DATED 4/5/00

s/Larry Raikes
JUDGE, NELSON CIRCUIT COURT

DISTRIBUTION LIST:

_____ Marshall Gaither

_____ John S. Kelley

_____ Roger Leggett

_____ Don Monin

Entered:
Apr 06 2000

Clerk _____

Date: _____